

E-015/GR-94-001

ORDER DENYING STAY, REQUIRING REPORT, AND DEFERRING ACTION ON
TREATMENT OF UNCLAIMED CUSTOMER REFUNDS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Tom Burton
Marshall Johnson
Dee Knaak
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of Minnesota
Power for Authority to Change its Schedule of
Rates for Retail Electric Service in the State of
Minnesota

ISSUE DATE: November 9, 1995

DOCKET NO. E-015/GR-94-001

ORDER DENYING STAY, REQUIRING
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PROCEDURAL HISTORY

I. Earlier Proceedings

On May 31, 1995 the Commission issued its ORDER SETTING FINAL RATES, REQUIRING REFUND, AND REQUIRING REPORT in this general rate case. The Order approved new rate schedules effective June 1, 1995 and required the Company to refund the difference between amounts collected during the interim rate period and amounts collectable under the new rate schedules.

The Order rejected the claim of the Large Power Intervenors¹ that new rates had to go into effect on the date of the original Order on the merits (November 22, 1994). Had new rate schedules gone into effect as of that date, Large Power refunds would have been significantly larger, and the refunds of other customer classes proportionately smaller.

On June 20, 1995 the Large Power Intervenors filed a petition for rehearing and reconsideration. On July 7 the petition was granted for purposes of affording it careful review;² on August 1 it was denied on the merits. The Large Power Intervenors then appealed to the Minnesota Court of Appeals.

II. The Company's Filing

¹The Large Power Intervenors are a group of Large Power customers that intervened jointly in this rate case. The group does not include every member of the Large Power class.

²Under Minn. Stat. § 216B.27, subd. 4, any petition for rehearing not granted within 20 days of filing is deemed denied. (1994)

On September 8, 1995 Minnesota Power filed a motion for a partial stay of its refund obligation pending conclusion of the appeal. The Company proposed to delay refunds to all customer classes except Large Power, the only customer class whose refunds could not be reduced as a result of the appeal.

Should the Commission deny the stay, the Company requested written assurance it would be granted rate recovery of any refunds it would not have made had the stay been granted. It also requested written assurance it would be granted rate recovery of the costs of conducting any refund true-up necessitated by the court's decision.

Finally, the Company filed a motion for permission to distribute unclaimed customer refunds to the local Salvation Army HeatShare program.

III. Intervenor's Comments

On September 27, 1995 the Large Power Intervenor filed comments supporting the partial stay proposed by the Company.

On September 28, 1995 the Department of Public Service (the Department) filed comments urging that the stay apply to all customer classes and supporting the Company proposal to distribute unclaimed refunds to HeatShare.

On October 6, 1995 Potlatch Corporation filed comments supporting the partial stay proposed by the Company.

On October 26, 1995 the matter came before the Commission.

FINDINGS AND CONCLUSIONS

IV. The Request for a Partial Stay

A. Positions of the Parties

The Company requests a partial stay to avoid the expense and inconvenience of administering a refund true-up, should the Commission be reversed on appeal. The Company argues that the benefits of an immediate refund are outweighed by its potential costs, both in money and in customer confusion and frustration. The Company believes the interest accruing on unpaid refunds adequately compensates ratepayers for the temporary loss of the use of their money.

The Company proposes to exempt Large Power customers from the stay, because their refunds cannot be reduced by any outcome on appeal. The Company states it would cost no more to distribute the uncontested Large Power refund now and any true-up amount later than to distribute a single refund at the end of the appeal. The Company argues that interest does not adequately compensate Large Power customers for the temporary loss of the use of their money, because the amounts at issue are so large and because these customers have counted on receiving those amounts during this fiscal year.

The Department favors a stay but opposes exempting the Large Power customers, on fairness grounds.

The Large Power Intervenors and Potlatch Corporation favor the partial stay proposed by the Company.

B. Commission Action

The Commission will deny the partial stay and require immediate refunds to all customer classes for the reasons set forth below.

1. Considerations in Granting or Denying a Stay

The Public Utilities Act and the Administrative Procedure Act give the Commission the discretion to stay Orders pending action by appellate courts. Minn. Stat. § 216B.53; Minn. Stat. § 14.65. The Commission grants a stay whenever it appears that a stay provides the most equitable means of balancing the interests of the utility, all ratepayer classes, and the appealing parties.

In balancing these interests, the Commission weighs factors such as the likelihood that denying the stay would cause irreparable harm, the likelihood that denying the stay would render the appeal meaningless, the gravity of any harm the stay would cause non-moving parties, the likelihood of reversal on appeal, and whether granting the stay would frustrate public policy. Since a stay is equitable in nature, the conduct of the parties can also be a factor. All these factors must be weighed in determining whether or not to grant a stay.

2. Considerations Applied

a. Likelihood of Irreparable Harm

First, denying the partial stay will not cause irreparable harm. The harms the Company seeks to avoid -- expense, inconvenience, customer confusion and frustration -- are real but not irreparable. The expense of a refund true-up process, estimated by the Company at \$100,000, is significant but not prohibitive. The customer confusion and frustration a refund true-up could cause would be temporary and largely preventable by good consumer education. In short, irreparable harm considerations do not weigh heavily in favor of a stay.

b. Effect on Ability to Prosecute Appeal

Similarly, denying the stay would not frustrate the purpose of the appeal. Should the Large Power Intervenors prevail, final rates would become effective as of the date set by the court, and Large Power customers would receive refunds of the difference between interim rates and final rates for the period at issue. Whether or not a stay is granted will have no effect on the relief sought by the Large Power Intervenors.

c. Harm of Granting Stay

Granting the stay would cause significant harm to at least some of the ratepayers whose refunds

would be delayed, tipping the scales in favor of denying the partial stay and ordering an immediate refund.

Rate cases are long and complex proceedings. This case began on January 3, 1994 and is still in litigation. Interim rates were in effect from March 1994 to June 1, 1995. Ratepayers have not yet received refunds of the difference between interim rates and final rates. The Company proposes further delay, arguing that ratepayers will be fully compensated by the interest accruing on unrefunded sums.

This is not entirely true, especially for residential ratepayers. Full refunds never reach all ratepayers, due to deaths, changes of address, and other intervening circumstances. In this case, for example, the Company estimates that unclaimed refunds could total as much as \$100,000. Delaying the refund inevitably increases the number of customers who will never receive it.

Furthermore, as the Company recognizes in the case of Large Power customers, interest does not always fully compensate ratepayers for the loss of the use of their money. Interest accruing is not the functional equivalent of cash in hand, especially for low income customers, who may have to forgo other necessities to meet their utility bills.

The Commission finds that granting the partial stay would cause substantial harm to many of the customers whose refunds would be delayed, as well as to the customers whose refunds would never reach them.

d. Remaining Factors; Conclusion

The remaining factors either militate against the stay or are neutral. The Commission considers the likelihood of reversal on appeal minimal. No public policies (other than those implicated in any request for a stay) would be frustrated by granting or denying the stay. No party has engaged in conduct meriting concern in this quasi-equitable context.

The Commission concludes that the harm from further delay in distributing the refund is both more certain and more severe than the the harm from having to conduct a refund true-up. The Commission will therefore require an immediate refund to all customer classes.

V. Written Assurance of Recovery

The Company requested written assurance that it would be granted rate recovery of any amounts incorrectly refunded due to the Commission's denial of its request for a stay. The Company

also requested written assurance that it would be granted rate recovery of the costs of conducting any refund true-up necessitated by the court's decision.

Not only are rate recovery issues intensely fact-specific, but the rate recovery issues raised here may never materialize. For both reasons, the Commission will defer action on these issues to any proceeding in which they may arise.

VI. Unclaimed Refunds

The Company requested permission to distribute unclaimed customer refunds to local HeatShare programs. HeatShare programs, administered by the Salvation Army, provide financial assistance with utility bills to low income households. The Commission will defer any action on this request until the total dollar amount of unclaimed refunds has been determined.

ORDER

1. Minnesota Power's request for a partial stay of its refund obligation under the Order of May 31, 1995 is denied.
2. Minnesota Power's request for permission to distribute unclaimed customer refunds to local HeatShare programs is deferred.
3. The Company shall begin the refund process required under the Order of May 31 forthwith.
4. Within 60 days of completing the refund process the Company shall file a report on unclaimed refunds.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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